

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



CALIFORNIA FACULTY ASSOCIATION,

Charging Party,

v.

TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY (SAN DIEGO),

Respondent.

Case No. LA-CE-822-H

Administrative Appeal

PERB Order No. Ad-355-H

August 9, 2006

Appearances: Rothner, Segall & Greenstone by Bernhard Rohrbacher, Attorney, for California Faculty Association; Steven Raskovich, University Counsel, for Trustees of the California State University (San Diego).

Before Duncan, Chairman; McKeag and Neuwald, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Trustees of the California State University (San Diego) (CSU) of the Appeals Assistant's denial of its untimely filed opposition to the statement of exceptions to an administrative law judge's proposed decision. The appeal alleges that PERB erroneously refused to accept CSU's brief as untimely.

BACKGROUND

In May of 2004, the California Faculty Association (CFA) filed an unfair practice charge alleging CSU unilaterally and unlawfully increased the contracting out of work. After two days of formal hearing, a proposed decision was served on the parties on April 4, 2006, making May 1, 2006, the deadline for filing a statement of exceptions to the decision.¹

¹PERB Regulation 32300 provides that a statement of exceptions to a proposed decision may be filed within 20 days following the date of service of the decision. In addition, PERB

By joint stipulation, the parties agreed to extend CFA's filing date for the exceptions to May 15, 2006. CFA filed its exceptions on May 11, 2006, making the deadline to file an opposition June 5, 2006.² CSU's opposition, however, was filed on June 9, 2006. Accordingly, CSU's opposition was not timely filed.

The sole issue in this appeal is whether good cause exists to excuse the late filing of CSU's opposition. We have reviewed the entire file, including CSU's appeal, the documents attached thereto, and CFA's response. We find that CSU presented adequate evidence to support a finding of good cause to excuse the late filing and, therefore, accept the opposition as timely filed.

FACTS

On April 19, 2006, prior to the expiration of time to file exceptions, Steven Raskovich (Raskovich), attorney for CSU, received a telephone call from Bernhard Rohrbacher (Rohrbacher), attorney for CFA. Rohrbacher indicated that his firm was recently retained to file a statement of exceptions on behalf of CFA and requested a continuance to file his exceptions. Raskovich agreed. The parties stipulated that CFA's statement of exceptions would be due on May 15, 2006.

The parties also discussed CSU's intent to file an opposition. However, the parties dispute what, if anything, was agreed upon regarding when the opposition was to be filed.

Regulation 32130(c) grants a five (5) day extension for responses to documents served by mail. Since the proposed decision was served by mail, CFA's statement of exceptions should have been filed no later than May 1, 2006. (PERB regs, are codified at Cal. Code Regs., tit. 8, section 31001, et seq.)

²PERB Regulation 32310 provides that a response to a statement of exceptions to a proposed decision may be filed within 20 days following the date of service of the statement of exceptions. In addition, PERB Regulation 32130(c) grants a five (5) day extension for responses to documents served by mail. Since the statement of exceptions was served by mail, CSU's opposition should have been filed no later than June 5, 2006.

According to CSU, the parties agreed that the opposition would be due on June 9, 2006. CFA, on the other hand, acknowledges that the parties did, in fact, discuss the timing to file CSU's opposition, and agreed that, based on a filing date of May 15, 2006, the opposition would be due on June 9, 2006. However, Rohrbacher has no recollection that the parties agreed to a firm June 9 deadline. Rather, since CFA filed its exceptions on May 11, 2006, the filing deadline for the opposition, based on PERB regulations, changed to June 5, 2006, to reflect the earlier filing date.

DISCUSSION

Pursuant to PERB Regulation 32136, the Board may, in its discretion, excuse late filings upon a showing of good cause. Good cause is a flexible standard that is defined and constrained by the considerations of fairness and reasonableness. (United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325 (Kestin).) The Board has found good cause to exist when the explanation was "reasonable and credible". (Barstow Unified School District (1996) PERB Order No. Ad-277 (Barstow).) The Board has also found good cause to exist for "honest mistakes" such as mailing or clerical errors. (Barstow.) Additionally, the Board has ruled that good cause exists only when the party made a conscientious effort to timely file and the delay did not cause prejudice to any party. (Kestin.)

Although CFA's explanation does not precisely corroborate CSU's, it is clear that the parties discussed filing the opposition on June 9. Under these facts, we believe it was reasonable for Raskovich to conclude his filing deadline was June 9. Thus, we find Raskovich made a conscientious effort to file his opposition on what he honestly believed was the mutually agreed upon due date.

It is noteworthy that CFA has not claimed prejudice due to the late filing, and we see no indication of prejudice. Indeed, CFA asserted that it would have granted a request for a

continuance had one been requested by CSU. Although the filing was four days late, CFA was aware that CSU intended to file an opposition. Moreover, since the opposition, if accepted, would have been the last substantive brief filed by the parties, we fail to see any prejudice to CFA. Because CSU's excuse was reasonable and credible and because the delay did not cause prejudice to CFA, we conclude good cause exists to excuse the late filing.

ORDER

The request by the Trustees of the California State University (San Diego) to accept its late-filed opposition to the statement of exceptions to the proposed decision in Case No. LA-CE-822-H is hereby GRANTED.

Chairman Duncan and Member Neuwald joined in this Decision.